

the unit's annual allowance allocation in the following calendar year.<sup>2</sup>

(B) Failure to demonstrate at least a 90% reduction of sulfur dioxide in 1997, 1998, or 1999 in accordance with part 75 of this chapter at a control unit governed by an approved Phase I extension plan shall be a violation of this section. In the event of any such violation, in addition to any other liability under the Act, the Administrator will deduct allowances from the control unit's compliance subaccount for the year of the violation. The deduction will be calculated as follows:

Allowances deducted = (1 – (percent reduction achieved ÷ 90%)) × Phase I extension reserve allowances received

where:

“Percent reduction achieved” is the percent reduction determined in accordance with part 75 of this chapter.

“Phase I extension reserve allowances received” is the number of Phase I extension reserve allowances allocated for the year under paragraph (e)(2)(ii) of this section.

(ii) *Nitrogen Oxides.*

(A) Beginning on January 1, 1997, each control and transfer unit shall be subject to the Acid Rain emissions limitations for nitrogen oxides.

(B) Notwithstanding paragraph (f)(1)(ii)(A) of this section, a transfer unit shall be subject to the Acid Rain emissions limitations for nitrogen oxides, under section 407 of the Act and regulations implementing section 407 of the Act, beginning on January 1 of any year for which a transfer unit is allocated fewer Phase I extension reserve allowances than the maximum amount that the designated representative could have requested in accordance with paragraph (c)(5) of this section (as adjusted under paragraph (d) of this section and by the Administrator in approving the Phase I extension plan) unless the transfer unit is the last unit

allocated Phase I extension reserve allowances under the plan.

(2) *Monitoring requirements.* Each control unit shall comply with the special monitoring requirements for Phase I extension plans in accordance with part 75 of this chapter.

(3) *Reporting requirements.* Each control and transfer unit shall comply with the special reporting requirements for Phase I extension plans in accordance with § 72.93.

(4) *Liability.* The owners and operators of a control or transfer unit governed by an approved Phase I extension plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan, including liability for fulfilling the obligations specified in part 77 of this chapter and section 411 of the Act.

(5) *Termination.* A Phase I extension plan shall be in effect only in Phase I, and no Phase I extension plan shall be terminated before the end of Phase I. The designated representative may, however, withdraw a Phase I extension plan at any time prior to issuance of the Phase I Acid Rain permit that includes the Phase I extension plan, as adjusted.

**§ 72.43 Phase I reduced utilization plans.**

(a) *Applicability.* This section shall apply to the designated representative of:

(1) Any Phase I unit, including:

(i) Any unit listed in table 1 of § 73.10(a) of this chapter; and

(ii) Any other unit that becomes a Phase I unit (including any unit designated as a compensating unit under this section or a substitution unit under § 72.41).

(2) Any affected unit that:

(i) Is not otherwise subject to any Acid Rain emissions limitation or emissions reduction requirements during Phase I; and

(ii) Meets the requirement, as set forth in paragraphs (c)(4)(ii) and (d) of this section, that for each year for which the unit is to be covered by the reduced utilization plan, the unit's baseline divided by 2,000 lbs/ton and multiplied by the lesser of the unit's 1985 actual SO<sub>2</sub> emissions rate or 1985

<sup>2</sup>In the case of a transfer unit that shares a common stack with a unit not listed in table 1 of § 73.10(a) of this chapter where the units are not monitored separately or apportioned in accordance with part 75 of this chapter, the combined emissions of both units will be deemed to be the transfer unit's emissions for purposes of applying paragraph (f)(1)(i) of this section.

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allowable SO<sub>2</sub> emissions rate does not exceed the sum of

(A) The lesser of 10 percent of the amount under paragraph (a)(2)(ii) of this section or 200 tons, plus

(B) The unit's baseline divided by 2,000 lbs/ton and multiplied by the lesser of: The greater of the unit's 1989 or 1990 actual SO<sub>2</sub> emissions rate; or, as of November 15, 1990, the most stringent federally enforceable or State enforceable SO<sub>2</sub> emissions limitation covering the unit for 1995-1999.

(b)(1) The designated representative of any unit under paragraph (a)(1) of this section shall include in the Acid Rain permit application for the unit a reduced utilization plan, meeting the requirements of this section, when the owners and operators of the unit plan to:

(i) Reduce utilization of the unit below the unit's baseline to achieve compliance, in whole or in part, with the unit's Phase I Acid Rain emissions limitations for sulfur dioxide; and

(ii) Accomplish such reduced utilization through one or more of the following:

(A) Shifting generation of the unit to a unit under paragraph (a)(2) of this section or to a sulfur-free generator; or

(B) Using one or more energy conservation measures or improved unit efficiency measures.

(2)(i) Energy conservation measures shall be either demand-side measures implemented after December 31, 1987 in the residence or facility of a customer to whom the unit's utility system sells electricity or supply-side measures implemented after December 31, 1987 in facilities of the unit's utility system.

(ii) The utility system shall pay in whole or in part for the energy conservation measures either directly or, in the case of demand-side measures, through payment to another person who purchases the measure.

(iii) Energy conservation measures shall not include:

(A) Conservation programs that are exclusively informational or educational in nature;

(B) Load management measures that lead to reduction of electric energy demands during a utility's peak generating period, unless kilowatt hour savings can be verified under § 72.91(b); or

(C) Utilization of industrial waste gases, unless the designated representative certifies that there is no net increase in sulfur dioxide emissions from such utilization.

(iv) For calendar years when the unit's utility system is a subsidiary of a holding company and the unit's dispatch system is or includes all units that are interconnected and centrally dispatched and included in that holding company, then:

(A) Energy conservation measures shall be either demand-side measures implemented in the residence or facility of a customer to whom any utility system in the holding company sells electricity or supply-side measures implemented in facilities of any utility system in the holding company. Such utility system shall pay in whole or in part for the measures either directly or, in the case of demand-side measures, through payment to another person who purchases the measures.

(B) The limitations in paragraph (b)(2)(iii) of this section shall apply.

(3)(i) Improved unit efficiency measures shall be implemented in the unit after December 31, 1987. Such measures include supply-side measures listed in appendix A, section 2.1 of part 73 of this chapter.

(ii) The utility system shall pay in whole or in part for the improved unit efficiency measures.

(4) The requirement to submit a reduced utilization plan shall apply in the event that the owners and operators of a Phase I unit decide, at any time during any Phase I calendar year, to rely on the method of compliance in paragraph (b)(1) of this section. In that case, the designated representative shall submit a reduced utilization plan not later than 6 months (or 90 days if submitted in accordance with § 72.82 or § 72.83), or a notification to activate a conditionally approved plan in accordance with § 72.40(c) not later than 60 days, before the allowance transfer deadline applicable to the first year for which the plan is to take effect.

(5) The designated representative of each source with a unit designated as a compensating unit in any plan submitted under paragraphs (b) (1) or (4) of

this section shall incorporate by reference in the permit application each such plan.

(c) *Contents of reduced utilization plan.* A complete reduced utilization plan shall include the following elements in a format prescribed by the Administrator:

(1) Identification of each Phase I unit for which the owners and operators plan reduced utilization.

(2) Except where the designated representative requests conditional approval of the plan, the first calendar year and, if known, the last calendar year in which the reduced utilization plan is to be in effect. Unless the designated representative specifies an earlier calendar year, the last calendar year shall be deemed to be 1999.

(3) A statement whether the plan designates a compensating unit or relies on sulfur-free generation, any energy conservation measure, or any improved unit efficiency measure to account for any amount of reduced utilization.

(4) If the plan designates a compensating unit, or relies on sulfur-free generation, to account for any amount of reduced utilization:

(i) Identification of each compensating unit or sulfur-free generator.

(ii) For each compensating unit. (A) Each of the following: The unit's 1985 actual SO<sub>2</sub> emissions rate; the unit's 1985 allowable emissions rate; the unit's 1989 actual SO<sub>2</sub> emissions rate; the unit's 1990 actual SO<sub>2</sub> emissions rate; and, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable SO<sub>2</sub> emissions limitation covering the unit for 1995-1999. For purposes of determining the most stringent emissions limitation, applicable emissions limitations shall be converted to lbs/mmBtu in accordance with appendix B of this part. Where the most stringent emissions limitation is not the same for every year in 1995-1999, the most stringent emissions limitation shall be stated separately for each year.

(B) The unit's baseline divided by 2,000 lbs/ton and multiplied by the lesser of the unit's 1985 actual SO<sub>2</sub> emissions rate or 1985 allowable SO<sub>2</sub> emissions rate.

(C) The unit's baseline divided by 2000 lbs/ton and multiplied by the lesser of:

The greater of the unit's 1989 or 1990 actual SO<sub>2</sub> emissions rate; or, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable SO<sub>2</sub> emissions limitation covering the unit for 1995-1999. Where the most stringent emissions limitation is not the same for every year in 1995-1999, the calculation in the prior sentence shall be made separately for each year.

(D) The difference between the amount under paragraph (c)(4)(ii)(B) of this section and the amount under paragraph (c)(4)(ii)(C) of this section. If the difference calculated in the prior sentence for any year exceeds the lesser of 10 percent of the amount under paragraph (c)(4)(ii)(B) of this section or 200 tons, the unit shall not be designated as a compensating unit for the year. Where the most stringent unit-specific federally enforceable or State enforceable SO<sub>2</sub> emissions limitation is not the same for every year in 1995-1999, the difference shall be calculated separately for each year.

(E) The allowance allocation calculated as the amount under paragraph (c)(4)(ii)(B) of this section. If the compensating unit is a new unit, it shall be deemed to have a baseline of zero and shall be allocated no allowances.

(F) Where, as of November 15, 1990, a non-unit-specific federally enforceable or State enforceable SO<sub>2</sub> emissions limitation covers the unit for any year in 1995-1999, the designated representative shall state each such limitation and propose a method for applying unit-specific and non-unit-specific emissions limitations under paragraph (d) of this section.

(iii) For each sulfur-free generator, identification of any other Phase I units that designate the same sulfur-free generator in another plan submitted under paragraph (b) (1) or (4) of this section.

(iv) For each compensating unit or sulfur-free generator not in the dispatch system of the unit reducing utilization under the plan, the system directives or power purchase agreements or other contractual agreements governing the acquisition, by the dispatch system, of the electrical energy that is generated by the compensating unit or sulfur-free generator and on which the

plan relies to accomplish reduced utilization. Such contractual agreements shall identify the specific compensating unit or sulfur-free generator from which the dispatch system acquires such electrical energy.

(5) The special provisions in paragraph (f) of this section.

(d) *Administrator's action.* (1) If the Administrator approves the reduced utilization plan, he or she will allocate allowances, as provided in the approved plan, to the Allowance Tracking System account for any designated compensating unit upon issuance of an Acid Rain permit containing the plan, except that, if the plan is conditionally approved, the allowances will be allocated upon revision of the permit to activate the plan.

(2) Where, as of November 15, 1990, a non-unit-specific federally enforceable or State enforceable emissions limitation covers the unit for any year during 1995-1999, the Administrator will specify on a case-by-case basis a method for using unit-specific and non-unit specific emissions limitations in approving or disapproving the compensating unit. The specified method will not treat a non-unit-specific emissions limitation as a unit-specific emissions limitation and will not result in compensating units retaining allowances allocated under paragraph (d)(1) of this section for emissions reductions necessary to meet a non-unit-specific emissions limitation. Such method may require an end-of-year review and the disapproval and de-designation, and adjustment of the allowances allocated to, the compensating unit and may require the designated representative of the compensating unit to surrender allowances by the allowance transfer deadline of the year that is subject to the review. Any surrendered allowances shall have the same or an earlier compliance use date as the allowances originally allocated for the year, and the designated representative may identify the serial numbers of the allowances to be deducted. In the absence of such identification, such allowances will be deducted on a first-in, first-out basis under § 73.35(c)(2) of this chapter.

(e) *Failure to submit a plan.* The designated representative of a Phase I unit will be deemed not to violate, dur-

ing a Phase I calendar year, the requirement to submit a reduced utilization plan under paragraph (b)(1) or (4) of this section if the designated representative complies with the allowance surrender and other requirements of §§ 72.33, 72.91, and 72.92 of this chapter.

(f) *Special provisions—(1) Emissions limitations.* (i) Any compensating unit designated under an approved reduced utilization plan shall become a Phase I unit from January 1 of the calendar year in which the plan takes effect until January 1 of the year for which the plan is no longer in effect or is terminated, except that such unit shall not become subject to the Acid Rain emissions limitations for nitrogen oxides in Phase I under part 76 of this chapter.

(ii) The designated representative of any Phase I unit (including a unit governed by a reduced utilization plan relying on energy conservation, improved unit efficiency, sulfur-free generation, or a compensating unit) shall surrender allowances, and the Administrator will deduct or return allowances, in accordance with paragraph (d)(2) of this section and subpart I of this part.

(2) *Reporting requirements.* The designated representative of any Phase I unit (including a unit governed by a reduced utilization plan relying on energy conservation, improved unit efficiency, sulfur-free generation, or a compensating unit) shall comply with the special reporting requirements under §§ 72.91 and 72.92.

(3) *Liability.* The owners and operators of a unit governed by an approved reduced utilization plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan, including liability for fulfilling the obligations specified in part 77 of this chapter and section 411 of the Act.

(4) *Termination.* (i) A reduced utilization plan shall be in effect only in Phase I for the calendar years specified in the plan or until the calendar year for which a termination of the plan takes effect; *provided* that no reduced utilization plan that designates a compensating unit that serves as a control unit under a Phase I extension plan shall be terminated, and no such unit

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shall be de-designated as a compensating unit, before the end of Phase I.

(ii) To terminate a reduced utilization plan for a given calendar year prior to its last year for which the plan was approved:

(A) A notification to terminate in accordance with § 72.40(d) shall be submitted no later than 60 days before the allowance transfer deadline applicable to the given year; and

(B) In the notification to terminate, the designated representative of any compensating unit governed by the plan shall state that he or she surrenders for deduction from the unit's Allowance Tracking System account allowances equal in number to, and with the same or an earlier compliance use date as, those allocated under paragraph (d) of this section to each compensating unit for the calendar years for which the plan is to be terminated. The designated representative may identify the serial numbers of the allowances to be deducted. In the absence of such identification, allowances will be deducted on a first-in, first-out basis under § 73.35(c)(2) of this chapter.

(iii) If the requirements of paragraph (f)(3)(ii) are met and upon revision of the permit to terminate the reduced utilization plan, the Administrator will deduct the allowances specified in paragraph (f)(3)(ii)(B) of this section. No reduced utilization plan shall be terminated, and no unit shall be de-designated as a Phase I unit, unless such deduction is made.

[58 FR 3650, Jan. 11, 1993, as amended at 59 FR 60230, Nov. 22, 1994; 60 FR 18470, Apr. 11, 1995; 62 FR 55481, Oct. 24, 1997]

### § 72.44 Phase II repowering extensions.

(a) *Applicability.* (1) This section shall apply to the designated representative of:

(i) Any existing affected unit that is a coal-fired unit and has a 1985 actual SO<sub>2</sub> emissions rate equal to or greater than 1.2 lbs/mmBtu.

(ii) Any new unit that will be a replacement unit, as provided in paragraph (b)(2) of this section, for a unit meeting the requirements of paragraph (a)(1)(i) of this section.

(iii) Any oil and/or gas-fired unit that has been awarded clean coal tech-

nology demonstration funding as of January 1, 1991 by the Secretary of Energy.

(2) A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit's Acid Rain emissions limitations for sulfur dioxide.

(b) The designated representative of any unit meeting the requirements of paragraph (a)(1)(i) of this section may include in the unit's Phase II Acid Rain permit application a repowering extension plan that includes a demonstration that:

(1) The unit will be repowered with a qualifying repowering technology in order to comply with the Phase II emissions limitations for sulfur dioxide; or

(2) The unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

(c) In order to apply for a repowering extension, the designated representative of a unit under paragraph (a) of this section shall:

(1) Submit to the permitting authority, by January 1, 1996, a complete repowering extension plan;

(2) Submit to the Administrator, before June 1, 1997, a complete petition for approval of repowering technology; and

(3) If the repowering extension plan is submitted for conditional approval, submit by December 31, 1997, a notification to activate the plan in accordance with § 72.40(c).

(d) *Contents and Review of Petition for Approval of Repowering Technology.* (1)

A complete petition for approval of repowering technology shall include the following elements, in a format prescribed by the Administrator, concerning the technology to be used in a plan under paragraph (b) of this section and may follow the repowering technology demonstration protocol issued by the Administrator:

(i) Identification and description of the technology.